IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 332 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GIRIRAJSINH JORAVARSINH

Versus

JILLA PANCHAYAT JUNAGADH

Appearance:

MR ARUN H MEHTA for Petitioner

MS. K.N. VALIKARIMWALA, A.G.P. for Respondent No. 2

MS. NAINA. V. PANCHAL for respondent No.1.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 21/03/97

ORAL JUDGEMENT

1. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908, has arisen from the dismissal of the suit brought by appellant challenging the order dated September 29, 1971, by which he was discharged from service as he had failed to pass pre-service training examination.

2. While admitting Second Appeal, following substantial questions of law are formulated by the court.

1. Whether the lower court committed an error in holding that the condition continued in Government Resolution dated January 1, 1968, enabling the respondents to terminate services of the clerks in the event of their failing to pass the examination referred to therein applied to the clerks like the appellant who were at the time of their recruitment governed by the Government Resolution dated 22-3-1966 ?
2. Whether in view of the facts and circumstances of the case, the order of termination of service of the appellant is legal, valid and operative in law ?

3. The above referred to substantial questions of law arise for the consideration of the court in the back drop of following facts.

4. The appellant was recruited as a Junior Clerk vide letter dated November 27, 1967, by District Development Officer, Dist : Junagadh, Junagadh. The order of appointment which is on record of the case at Exh.18 shows that the appointment of the appellant was purely on temporary basis and liable to be terminated on his failure to be selected for the said post. The appellant was thereafter deputed for pre-service training by order dated September 16, 1969, which is produced at Exh.30. On completion of training, the appellant was directed to pass pre-service training examination. The appellant was given 4 chances to pass pre-service training examination. However, the appellant could not pass pre-service training examination in 4 attempts. Therefore, the Deputy Development Officer, Junagadh, vide letter dated September 29, 1971, discharged the appellant from service. On receipt of order, the appellant made representations to the District Development Officer without success. According to the appellant his appointment to the post of Clerk was not subject to his passing pre-service training examination, and, therefore, the order of discharge was liable to be set aside. It was also his case that as he was appointed by District Development Officer, Junagadh, he could not have been removed from service by Deputy Development Officer and as order discharging him from service was contrary to the provisions of Article 311 (1) of the Constitution, it was liable to be set aside. Under the circumstances, after serving statutory notice, the appellant instituted Regular Civil Suit No.195 of 1978 in the court of learned Civil Judge (S.D.), Junagadh and prayed to declare that

order dated September 29, 1971, discharging him from service was void and inoperative.

5. The respondent No. 1 Jilla Panchayat, Junagadh contested the suit by filing written statement at Exh.6 and denied the averments made in the plaint. In the written statement, it was claimed that as the appellant had failed to pass pre-service training examination, he was discharged from service and discharge simpliciter from service was not liable to be set aside. It was averred that as the appellant was discharged from service and not dismissed from service, provisions of Article 311 (1) of the Constitution were not attracted to the facts of the case and the suit was liable to be dismissed. The respondent No.2 contested the suit by filing written statement at Exh.10 and raised almost similar contentions as were raised by respondent No.1 in its written statement.

6. Having regard to the pleadings of the parties, the trial court framed 5 issues for determination. On appreciation of evidence led by the parties, the trial court held that condition of passing pre-service training examination was applicable to the appellant and the appellant having failed to pass pre-service training examination in 4 attempts, he was liable to be discharged from service. The trial court deduced that as the appellant was not dismissed from service and as he was discharged from service, Article 311 (1) of the Constitution had no application to the facts of the present case. In view of these conclusions, the trial court dismissed the suit filed by the appellant vide judgment and decree dated April 5, 1977.

7. Feeling aggrieved by the abovereferred to decree, the appellant preferred Regular Civil Appeal No. 86 of 1977, in the District Court at Junagadh. The learned Assistant Judge, Junagadh, who heard the appeal has dismissed the same by judgment and decree dated March 18, 1981 giving rise to the present appeal. The fact that the appellant was appointed purely on temporary basis and his services were liable to be terminated on his not being selected for the post is not in dispute. This is quite evident from the terms mentioned in appointment order which is produced at Exh.27. The scheme for pre-service training for clerks recruited to Panchayat services was framed on March 22, 1966 i.e. even before the appointment of the appellant as Clerk. This is evident from Government resolution dated January 1, 1968, which is produced by the respondents at Exh.39. By resolution dated January 1, 1968, it was stipulated that

the trainee would be given maximum 3 chances to pass the pre-service training examination. Subsequently, it was decided that a Junior Clerk would be given 4 chances to pass pre-service training examination and if he failed, he would be liable to be discharged from service. It is not in dispute that the appellant was sent for " in service training " and he had failed to pass pre-service training examination in 4 attempts. As the appellant failed to pass pre-service training examination, his services were liable to be terminated. Under the circumstances, no exception can be taken to order dated September 29, 1971, by which the appellant was discharged from service. The first substantial question of law proceeds on the footing that by Government Resolution dated March 22, 1966, it was never stipulated that a Junior Clerk was required to pass pre-service training examination. A reference to Government Resolution dated January 1, 1968, which is produced at Exh.39 makes it abundantly clear that even under the terms by Government Resolution dated March 22, 1966, a Junior Clerk was required to pass pre-service training examination. By government resolution dated January 1, 1968, one more chance was given to the Junior Clerk to enable him to pass pre-service training examination. However, it would not be correct to say that for the first time the respondents were authorized to terminate services of Junior Clerks on the ground of their failure to pass pre-service training examination by resolution dated January 1, 1968. As observed earlier, the appellant was appointed as Junior Clerk by order dated November 27, 1967. That order itself indicates that vacancies had arisen because services of certain Junior Clerks were terminated as they had failed to pass pre-service training examination. It is not brought to the notice of the court that the appellant was entitled to get more than 4 chances to enable him to pass pre-service training examination either under the Rules governing conditions of service or Government Resolutions issued from time to time. On totality of the facts and circumstances of the case, it can not be said that the respondents had no authority or power to discharge the appellant from services on the ground that the appellant had failed to pass pre-service training examination. Under the circumstances, the first substantial question of law is answered in negative and against the appellant.

8. The contention that the order by which the appellant has been discharged from service is contrary to the provisions of Article 311 (1) of the Constitution has also no substance. Both the courts on construction of the discharge order have concluded that the appellant is

not dismissed from service, but this is a case of discharge from service simpliciter. This is neither a case of dismissal from service nor removal from service. The appellant has been discharged from service on the ground of unsuitability as he could not pass pre-service training examination within stipulated time and attempts. It is well settled by catena of decisions of the Supreme Court that a temporary government servant has no right to hold post and his services are liable to be terminated in accordance with relevant service rules and/or terms of contract. It is not the case of the appellant that he was discharged from service because of any mis-conduct. In the appointment order, it was clearly mentioned that the appointment of the appellant was temporary and was liable to be terminated without giving notice, if the appellant failed to get himself selected to the post. By not passing the pre-service training examination, the appellant could not get himself selected for the post. Order of termination simpliciter having been passed in the case of appellant, I am of the view that provisions of Article 311 (1) of the Constitution are not attracted to the facts of the present case and the order of termination is neither illegal nor inoperative in law. Therefore, second substantial question of law is answered in the affirmative and against the appellant.

9. While passing the impugned decrees, both the courts have taken into consideration the evidence led by the parties and relevant provisions of law. On appreciation of evidence and in view of the admitted facts, the courts have held that the appellant is not entitled to the declaration claimed in the suit. No error is committed by the courts either in appreciating the evidence or interpreting the provisions of law. Therefore, the impugned decrees are not liable to be set aside in the present appeal which is instituted under Section 100 of the Code of Civil Procedure, 1908.

10. For the foregoing reasons, I do not find any substance in the Second Appeal. The Second Appeal therefore, fails and is dismissed. However, having regard to the facts of the case, there shall be no order as to cost.

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